IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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S.B.CRIMINAL MISC. PETITION NO. 1346/2005
(Anand Kumar Vs. State of Rajasthan)

Date of Order : 14/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Suresh Kumbhat for the petitioner
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. N.S.Rathore for the complainant.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner seeks quashing of FIR No. 202/05 Police Station, Sardarshahar, district Churu for the offences under Sections 420 and 406 IPC.

I have heard learned counsel for the petitioner and public prosecutor as also counsel appearing for the complainant.

It is contended by the learned counsel for the petitioner that the occurrence as alleged by the complainant is of dated 12.8.93 and the police on investigation at one point of time filed negative final report. However, at the instance of the

complainant, the matter was sent back to the police for further investigation. Learned counsel for the petitioner submits that from the date of occurrence almost 13 years have since elapsed and there being no documentary evidence showing any advance payment alleged to have been made by the complainant to the petitioner. The complain is lodged by the complainant for the ulterior motive so as to harass the petitioner. Learned counsel for the petitioner has relied on a judgment of Hon'ble Supreme Court in Suresh Vs. Mahadevappa Shivappa Danannava and Anr., 2005 R.Cr.D. 648 (SC).

Learned counsel appearing for the complainant submits that the complainant and the petitioner had good relation and in the belief the complainant paid a sum of Rs. 2,80,000/- as advance amount for getting the jewellery prepared by the petitioner. The petitioner failed to make the jewellery and give to the complainant and have been assuring that he will do so and therefore, the complainant has been waiting for the work to be executed by the petitioner and when lastly the petitioner refused to return the advance amount or to give the ornaments for that amount, filed the instant FIR.

I have given my thoughtful consideration to the rival submissions made by the counsel for the parties.

In the FIR it is stated that a sum of Rs. 2,80,000/- was given for getting the jewellery made by the complainant to the petitioner on 12.8.93. Though in the complaint, it has been stated that the amount was given to Shyam Sunder and the present petitioner in the presence of one Uma Shankar Sharma. From the bare reading of the first information report, it is not clear as to whom, the said amount was given whether it was given to Shyam Sunder or the present petitioner. No documents in this respect has been placed on record and obviously no such document was executed as stated by the complainant. For such a big amount, the complainant has failed to produce any books of accounts or the returns of income tax where such an amount said to have been shown having paid to the petitioner or to Shyam Sunder. Even there is no element of cheating.

In Suresh Vs. Mahadevappa Shivappa Danannava and Anr. (supra) Hon'ble Supreme Court observed as under :-

> ''As already noticed, the complaint was filed on 17.5.1999 after a lapse of 11 ½ years and, therefore, the very private complaint filed by the respondent No.1 is not at all maintainable at this distance of time. It is the specific case of accused No.1 that he has not executed any agreement to sell or received any advance payment. In our view, the complaint does not dosclose the ingredients of Sec. 415 of CrPC and, therefore, we have no hesitation to set aside the order passed by the Magistrate taking

> cognizance of the offence alleged. It is also not clearly proved that to hold a person guilty of cheating, it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. The order of the Magistrate and of the High Court requiring the accused No.1 appellant herein to face trial would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for setting aside the order of the Magistrate as confirmed by the High Court of issuance of process and the proceedings itself. ''

Hon'ble Supreme Court on the above premises, set aside the order of the High Court and that of the Magistrate and it was held that the complaint was liable to be dismissed on the question of inordinate latches on the part of the complainant himself.

Keeping in view the decision of Hon'ble Supreme Court in Suresh Vs.Mahadevappa Shivappa Danannava and Anr. (supra) and the fact that inordinate delay of 13 years has not been satisfactorily explained and therefore, in my view, the averments made by the complaint appear to be inherently improbable and to allow the FIR lodged on such averments and the investigation ensued thereunder, is nothing but an abuse of the process of the Court.

Consequently, the petition is allowed. The first

information report No. 202/05 P.S. Sardarshahar, district Churu and the investigation ensued thereunder is hereby quashed. Stay petition stands disposed of.

(H.R.PANWAR),J.

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